

The logo for Which?, featuring the word "Which?" in white text on a red square background.

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Response by: Which?

Consultation response

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Which? response to the ORR's consultation on Changes to Complaints Handling Guidance

About Which?

Which? is the largest independent consumer organisation in the UK with more than 1.5 million members and supporters. We operate as an a-political, social enterprise working for all consumers and funded solely by our commercial ventures. We receive no government money, public donations, or other fundraising income. Which?'s mission is to tackle consumer detriment by making individuals as powerful as the organisations they have to deal with in their daily lives. Which? empowers consumers to make informed decisions and campaigns to make people's lives fairer, simpler and safer.

Summary

- The Government should establish a Transport Ombudsman on a statutory basis with it being mandatory for all train operating companies to be a member.
- Which? welcomes the proposal to create a new rail ombudsman. It should be mandatory for all train operating companies to be a member, whether through regulation or licence conditions.
- The new ADR scheme should fulfil three roles - the resolution of individual complaints, improving complaint handling by firms, and reducing the causes of complaints.
- It should be easy and straightforward for consumers to access redress. This includes only going to one place to resolve complaints.
- The presence and role of ADR should be flagged to consumers more than once during their complaint journey.

Introduction

Which? has received thousands of passenger stories that bring to life the problems people face every day when travelling on the trains. People's frustrations have ranged from delayed and unreliable services, overcrowded and dirty carriages, and poor customer service from staff in stations and on trains.

Which? is a consumer champion
We work to make things better for consumers. Our advice helps them make informed decisions. **Our campaigns make people's lives fairer, simpler and safer.**
Our services and products put consumers' needs first to bring them better value.

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Even after experiencing these problems, very few people told us that they attempted to complain or claim compensation. Yet where people did complain, they often felt that the process was difficult, that the companies involved were unhelpful, and that the amounts received derisory. Some people did not even get a response from a train company after submitting a complaint.

Which? analysis of official Transport Focus data has revealed that passenger satisfaction on how complaints are managed has failed to significantly improve in over a decade. Today only 46% of passengers are satisfied, whereas ten years ago it stood at 42%.

It is clear that the current redress landscape in rail is not fit for purpose. The absence of a formal ADR scheme means that passengers' complaints can too often go unheard, with no opportunity to escalate their complaint if a train-operating company fails to deal with their complaint effectively. Transport Focus, the passenger watchdog, provides a voluntary forum for complaint handling but has no powers to impose binding decisions. This means that rail providers have little incentive to handle complaints effectively at the first tier or to be held to account for service failings.

The ORR's review of the Complaints Handling Procedures (CHPs) in rail is welcome, particularly in preparation for the forthcoming voluntary Ombudsman. Given the barriers passengers currently face when trying to resolve issues, the success of the new scheme will be reliant on how well the scheme is communicated, the simplicity of the complaints journey, and the coverage of the scheme across all train operators. However the new Ombudsman scheme should only be viewed as a last resort to improvements to individual train operating companies' first-tier complaints handling practices, so that passengers can receive effective redress as quickly as possible.

Effective, mandatory Alternative Dispute Resolution (ADR) must be a priority for the rail sector to ensure that people are not ignored when they face problems on the network, companies improve their own complaints handling systems, and that wider service failings are addressed. Effective ADR is also fundamental to increasing trust in markets by providing protections when things go wrong, which is critical for a sector that scores low on consumer trust.

1. Signposting unresolved complaints

It must be easy and straightforward for consumers to access redress. This requires a simple complaints journey which entails going to a single place to resolve complaints. Of the three options proposed in the consultation document, Option 1 is the most appropriate as it involves clear signposting to the ADR scheme during the complaints process is the most appropriate. This is the only option that ensures direct access for consumers to the ADR scheme and it places the onus on the scheme to decide whether it can deal with a complaint and refer it elsewhere if it cannot. Which? agrees with the proposal that there should be a protocol for handling complex complaints that include relevant issues for both the ADR scheme and the transport consumer champions.

It would be concerning if Option 2 or Option 3 were implemented as a means to communicate about the scheme. It is inappropriate for rail companies to decide whether to refer a complaint to the ADR scheme or to the existing rail consumer bodies, as proposed by the second option.



As the consultation notes, there would be a perverse incentive for rail companies to direct complaints to Transport Focus or London TravelWatch since these involve no cost to the companies and these bodies are unable to issue binding decisions on the companies, or deliver remedies for passengers. Where complaints are complex and cover several issues, there would be a particularly strong incentive for companies to direct complaints away from the ADR scheme if at all possible. This option would not provide consumers with reassurance that their complaint will be dealt with fairly and properly and it would undermine consumer trust in the new system.

The third option would only prevent consumers from directly accessing the ADR scheme. This option proposes retaining the existing system of rail companies referring complaints to Transport Focus or London TravelWatch before complaints are passed onto the ADR scheme where the bodies have been unable to resolve it themselves. As the consultation itself notes, this would risk high complainant drop-out as the process drags on, and risk further passenger dissatisfaction and poor trust in the rail sector.

Setting expectations on communications

The quality, length and timeliness of communications about the ADR options open to consumers is extremely important in determining whether consumers decide to take a complaint forward to ADR. It is an essential component in the success of the new ADR scheme. As such, the ORR should set out clear expectations and standards for the communication of the ADR scheme, which go beyond the consultation proposal.

As the consultation notes, Ofgem has found that the quality of energy supplier communications has a significant impact on consumers' engagement with the ADR scheme. Which?'s own research found that external factors prompted consumers to take their complaint to an ombudsman including receiving and noticing a leaflet and or deadlock letter from the company. In contrast, few consumers who decided not to escalate the complaint to the ADR scheme could remember having received a deadlock letter or ADR information leaflet from the company.¹

Communications need to be clear and accessible for consumers, and need to increase consumers' awareness of the ADR scheme itself and their right to take unresolved complaints to it. Prescriptive rules are not necessary to achieve this, and in fact could reduce the opportunity for innovation and experimentation in communications. However, clear standards will support the delivery of a successful ADR scheme and should include:

- Communications are accessible to all consumers including plain simple language.
- Communications clearly set out the complaints that ADR can deal with and the consumer's options for resolving complaints which are out of scope.
- Communications clearly explain how ADR works – including how to submit a complaint, the time limits for doing so, how the process works, how long it takes and what to expect.
- Communications clearly explain the possible outcomes to a complaint.

¹ Which? research, The Behavioural Architects Alternative Dispute Resolution for Consumers, October 2015, unpublished.

2. Timescale for sending signposting letters

Effective signposting to ADR should aim to achieve two core outcomes – to raise consumer awareness of ADR, and to encourage consumers to refer their unresolved complaints for ADR. Which? research has found that consumers are more likely to use ADR when they have received information about it two or three times during their complaints process.² As such, consumers should be signposted to ADR at more than one point in their journey - for example, when their complaint is submitted and at six and eight weeks. This will increase the likelihood that a passenger will continue with their complaint until a satisfactory outcome has been reached.

The ORR should review the effectiveness of the ADR process, including the timings of signposting and the communications. It would be appropriate to conduct this one year from the establishment of the scheme and then regularly thereafter. Any review and recommendations should be published and should inform any resultant changes to improve the scheme.

The ORR's review should include the following outcome indicators:

- Awareness of ADR scheme among: (i) all rail passengers; (ii) rail passengers who have complained, by train operating company.
- Proportion of unresolved complaints referred to ADR.

Other indicators should include:

- How people have heard of the ADR scheme.
- Proportion of consumers who complained who remember a communication from the train company signposting to the ADR scheme.
- Length of time taken to resolve complaints by individual train operating companies.
- Proportion of unresolved complaints that receive deadlock letters and signposting to ADR.

Time limits to signposting

Consumers are more likely to pursue their complaint through ADR the earlier they are made aware of the scheme, therefore Which? agrees that individual train companies should be allowed to reduce their signposting time limits to below the minimum standard. However, as stated above, the frequency of signposting to the scheme is equally important and therefore individual train companies must ensure that they make their complainants aware of the scheme at multiple points during the complaint journey.

Signposting before the time period is reached should be allowed as this will help improve the effectiveness of the complaint handling process. It also enables consumers to access ADR quicker, if they choose, improving the consumer experience.

3. Requirement to be a member of an ADR scheme

Which? continues to call for the Government to establish a Transport Ombudsman on a statutory basis, and for such a scheme to be mandatory for all train operating companies. There are currently insufficient market incentives ensuring that rail companies will deliver good outcomes for consumers and sign up to ADR voluntarily.

² Which? research, The Behavioural Architects Alternative Dispute Resolution for Consumers, October 2015, unpublished.



Consumer trust in the rail industry has remained persistently low for the last five years and currently standing at 27%.³ This is not helped by individual train companies' poor handling of complaints when customers raise concerns. As the ORR has found, 12 out of 24 train companies failed to meet their regulatory requirements in responding to complaints in a timely fashion. Which? research has shown that only 46% of passengers were satisfied how a train company handled their complaint in 2017, with little improvement on satisfaction levels made in over decade. This is unacceptable in the context of rising dissatisfaction with the service that train companies are providing, as demonstrated by the 7% rise in passenger complaints this year.⁴ It is imperative that train operating companies improve their own complaints handling processes and meet their license obligations, and the ORR should take firm action where it finds evidence of such breaches.

Given the culture of poor complaints handling across the rail market, passengers must have guaranteed access to an effective, independent ADR scheme, which will deliver binding outcomes and have the power to award compensation. Which? has strong expectations that the rail industry can deliver, 100% sign-up and coverage of firms.

As an interim measure, Which? is open about how mandatory provision can be achieved whether through regulation or licence conditions. However, there must be full coverage of the scheme. The best safeguard for consumers is ensuring that the ADR scheme membership is mandatory for all train operating companies.

Other approaches to provide certainty in the ADR arrangements for consumers

To facilitate effective oversight of the rail ombudsman scheme, the ORR should have competent authority status in the ADR regulations. In the interim, the ORR must work closely with CTSI to provide effective oversight.

ADR should fulfil three roles - resolution of individual complaints, improvement of complaint handling by firms, and reduction of the causes of complaints. Which? has developed a principles based framework on what a good ADR scheme looks like and identifying the following features:

- Independent
- Effective
- Transparent
- Fair to the consumer; and
- Promoting improvements.

ADR schemes should also be easy to access and use. This should include:

- Consumers being aware of the ADR scheme.
- An easy, one-step process for starting the ADR process.
- Schemes providing support to consumers throughout the process, including regular communication.

³ Which? Consumer tracker, Train Travel trust, September 2017

⁴ Office of Rail and Road, Annual Rail Consumer Report, July 2017



- Complaints being resolved as quickly as possible.

To help firms and the sector improve their complaint handling and reduce the cause of complaints ADR schemes should:

- Publish their decision criteria, complaints data, and anonymised outcomes of cases.
- Use complaints data to help members of ADR schemes, and the sector in general, to improve services to consumers.
- Ensure that their decisions are binding and enforceable.

It is critical that the ADR scheme makes granular complaints data publicly accessible on a regular basis. This will allow for better scrutiny of the scheme, identification of persistent systemic problems, and where there are poor performance issues in individual TOCs. This should in turn drive improvements across the sector and help to resolve the consumer trust deficit in the rail sector.

Charter operators and station licence holders

All rail passengers should be able to access redress wherever their problem arose on the journey, at the station, or traveling. The type of issues consumers complain about in relation to Network Rail managed stations would be in scope for a rail ombudsman. For example, Network Rail received 2,473 complaints related to its managed stations, with 21% of complaints relating to customer care and 17% about information provision.⁵

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⁵ Office of Rail and Road, Annual Rail Consumer Report, July 2017